

## **Testimony**

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Health Care Financing Administration**

**on**

**The Nursing Home Initiative  
before the**

**Senate Special Committee on Aging**

**September 28, 2000**

Chairman Grassley, Senator Breaux, distinguished Committee members, thank you for inviting us to discuss the quality of nursing home care and our progress in implementing our Nursing Home Initiative. We are releasing a report on this Initiative which shows measurable success in several areas. We also can clearly see the need to strengthen efforts in other areas.

Key successes include:

- a substantial increase in the number of surveys conducted on nights and weekends;
- more citations are being made for substandard care and failure to prevent problems like bed sores;
- the vast majority of facilities with serious problems identified by surveyors are being referred for immediate sanctions;
- homes terminated from the Medicare and Medicaid programs because of quality problems are staying out until it is clear that they have made necessary corrections; and
- public response to our consumer education efforts is very positive, especially for our award-winning Nursing Home Compare website, which allows consumers to search by zip code or facility name for data on each facility's care and safety record, staffing levels, number and types of residents, facility ownership, and comparison to State and national averages.

Shortcomings where we need to strengthen efforts include:

- failure by about one third of States to promptly investigate serious complaints;
- 'weaknesses in some States' efforts to address levels of quality in "special focus" facilities, designated as such because of serious, repeated problems;
- failure by about one third of States to conduct surveys of every facility at least every 15 months, as required by law, and to submit data on survey findings in a timely manner; and
- Federal oversight of State survey activities.

We are working to address these shortcomings and build on our success. We also are working to further our groundbreaking research on the link between staffing levels and quality of care. The President has proposed \$1 billion over five years in incentive grants to help States explore innovative ways to raise staffing levels. This Committee, in particular, has been invaluable in helping us obtain the funding we need for our efforts to improve nursing home quality, and we look forward to working with you again to secure passage of this important legislation.

## **Background**

Protecting the 1.6 million residents in the nation's 17,000 nursing homes nursing home residents is a priority for this Administration and our Agency. In 1995, we began enforcing the toughest nursing home regulations ever. These new regulations led to several improvements, including reductions in improper use of anti-psychotic drugs and physical restraints. However, findings in our 1998 Report to Congress, as well as GAO investigations, made clear that problems persisted. State-run nursing home inspections were too predictable, with inspectors frequently appearing on Monday mornings and rarely visiting on weekends or evening hours, allowing nursing homes to prepare for inspections. Several States rarely cited nursing homes for substandard care. Residents were suffering from easily prevented problems such as bed sores, malnutrition, and dehydration. And they were experiencing physical and verbal abuse, neglect, and misappropriation of property.

To address these issues, in 1998 we launched the President's Nursing Home Initiative (NHI), and have been continually building on it since that time. The NHI includes many ongoing provisions to meet specific goals, such as:

- preventing dehydration, malnutrition, and abuse
- making inspections less predictable and helping States improve the quality of inspections;
- quickly investigating complaints alleging actual harm to residents; and
- cracking down on facilities with repeated violations by making them subject to greater

scrutiny and immediate sanctions, and preventing those terminated from Medicare and Medicaid from immediately reentering the programs.

We have obtained essential support for the NHI by working with Congress. The overall amount provided to the Department for the NHI in FY 1999 was \$15.2 million, and in FY 2000 the total was \$79.7 million. For FY 2001, the President has requested a total of \$84.9 million. These totals have many components. For example, State survey agencies, which have the primary responsibility for conducting inspections and protecting resident safety, received \$8 million in FY 1999 to begin phase in of the NHI activities. For FY 2000, Congress increased funding to the State survey agencies by \$40.5 million for NHI activities. In FY 2001, the President is requesting \$55.4 million for the States for NHI activities.

In addition to providing investment funds for State activities, Congress also has increased funding to HCFA and the Department of Health and Human Services to support the NHI. The \$7.2 million provided to the Department in FY 1999 promoted quality assurance, increased federal oversight, and provided additional funds for reducing the backlog of appeals. In FY 2000, \$31.2 million is targeted towards these oversight activities.

It has now been two years since the NHI began. Many provisions are still being implemented, and it would be premature to draw definitive conclusions about the impact of various NHI provisions from the limited, preliminary data available to date. There also is substantial variation among States in all measures examined. However, the preliminary findings in our report will begin to help us identify where improvements are being made and where further efforts are needed.

### ***Summary of Findings***

Some NHI provisions have been implemented successfully in most States.

- State surveyors have nearly reached the goal of conducting 10 percent of such surveys on nights and weekends.
- They are identifying more substandard quality of care, with the average number of deficiencies found per survey up from 6.3 to 7.0, and the number of facilities cited for failure to prevent or care for bed sores up from 16.4 percent to 17.7 percent.
- They also are citing more nursing homes for abuse, with the total up from 7.5 percent in 1997 to 14.1 percent in 1999.
- Over 90 percent of facilities with severe deficiencies were referred for immediate sanction.
- Only 10 of 33 nursing homes involuntarily terminated from the Medicare program in 1999 had been readmitted. Those that were readmitted had remained out of the program an average of 5 months while they made corrections to come back into compliance.

However, more work is needed to successfully implement other NHI provisions.

- Not all States are using a streamlined process for investigating serious complaints. That may be because States and HCFA had different expectations about the support we would provide, but clearly the support we did provide was not sufficient.

Nevertheless, more than two-thirds of the States reported that they are investigating complaints alleging immediate jeopardy within 2 days and 13 States are investigating all complaints alleging actual harm within 10 days.

- Some States may not have fully implemented protocols for investigating "special focus" facilities, designated as such because of serious, repeated problems. Overall, however, this effort has helped to document serious problems. Ten percent of these facilities were removed from the Medicare and Medicaid programs or voluntarily withdrew, while another 25 percent improved sufficiently to now be considered in substantial compliance.
- About a third of States are not conducting surveys every 15 months, as required, or submitting data on survey findings in a timely manner. We have written these States urging them to come into compliance as a first step that could lead to significant sanctions.

Our report also examines resident characteristics that may indirectly reflect NHI interventions. Use of physical restraints has continued to decline, from 16.3 percent in 1997 to 11.1 percent in 1999. However, data on other measures are mixed and vary by data source, making it difficult to reach firm conclusions.

In addition, our report reveals the continuation of significant variation in the type and number of deficiency citations across States. For example, our report finds that there is variation across States in the numbers of citation for abuse, substandard quality of care, and pressure sores. Such variation could be attributed to differences across States in nursing home case-mix, actual quality of care, or surveyor practices. The inability to explain this variation makes it difficult to determine, with any degree of confidence, whether the quality of nursing home care is good or bad overall, or in any particular State.

Finally, our report reviews other NHI consumer education efforts. Perhaps the most successful is our award-winning Nursing Home Compare website at [www.medicare.gov](http://www.medicare.gov).

Nursing Home Compare allows consumers to search by zip code or facility name for data on each facility's care and safety record, staffing levels, number and types of residents, facility ownership, and ratings in comparison to State and national averages. The site is recording 500,000 page views each month and is by far the most popular section of our website. In addition, we have revised our "Guide to Choosing a Nursing Home" booklet and video and have greatly expanded distribution. We have begun national education campaigns to raise awareness of malnutrition and dehydration, resident abuse, and the rights to quality care. And we have tested post cards that allow residents, families, and staff to submit anonymous complaints.

### *Next Steps*

We are committed to continuing to strengthen and build upon the NHI, and we will take several specific additional actions to do so. These include:

- Continuing to work to increase consistency in the survey process and in interactions between our Regional Offices and State survey agencies, including investigating the feasibility of conducting more Federal comparative surveys to determine the reliability of State deficiency citations;
- Developing and requiring continuing education for surveyors to bring consistency in how different deficiencies are categorized, and requiring periodic recertification of surveyors;
- Examining how to make optimal use of available remedies and the possible need for additional authorities;
- Implementing Standards of Performance for State survey agencies to provide a consistent basis for evaluating and comparing the performance across States;
- Enhancing monitoring efforts to more quickly detect and address concerns about States' compliance with special focus surveys, off-hour surveys, and annual surveys; and
- Refining data systems to allow better linkages between data sources, greater insights into variations, more timely access, and easier conversion to consumer-friendly formats.

### ***Increased Staffing***

We also will continue efforts to address the link between staffing levels and quality of care. We recently published preliminary findings that, for first time ever, demonstrated in a statistically valid way that there is a clear relationship between staffing levels and quality of care. The study found significantly more problems in facilities with less than 12 minutes of registered nursing care, less than 45 minutes of total licensed staff care, and less than 2 hours of nursing aide care per resident per day.

More than half of nursing homes do not meet these rates, and the troubling results suggest that many facilities may need to increase staffing levels. We are now working to expand and further validate our research, refine ways to adjust minimum staffing requirements for the types of patients in a given facility, and determine the costs and feasibility of implementing minimum staffing requirements.

Also to address these findings, the President has proposed legislation authorizing \$1 billion over five years in incentive grants to help States explore innovative ways to raise staffing levels. The proposal also includes enhanced requirements for reporting by individual nursing on their staffing levels, and a commitment to develop minimum staffing regulations within two years.

In addition, the President is proposing that facilities cited for violating care and safety standards

be required to immediately pay civil money penalties. This is necessary because, currently, nursing homes often avoid payment for years while they pursue appeals. Under this proposal, fines collected would be used to partially finance the grant program for increasing staffing levels, and nursing homes that successfully challenge the fines would receive refunds with interest.

We are disappointed that the House Commerce Committee did not include these important provisions in its mark-up of the Beneficiary Improvement and Protection Act of 2000. We will continue to work with Congress to secure enactment of these proposals, as well as Administration proposals to establish criminal, civil, and injunctive remedies for patterns of violations that harm nursing home residents, and to require criminal background checks for nursing home employees.

### ***Conclusion***

States have generally implemented the NHI in ways that should lead to improvements in oversight and quality of care. There have been substantial increases in staggered surveys, a rise in citations for quality problems, and reductions in use of restraints. More work is needed in specific areas, such as implementing speedier complaint investigations. We are committed to continuing to work with residents and their families, advocacy groups, providers, States, and Congress to ensure that the NHI is fully and effectively implemented and that nursing home residents receive the quality care and protection they deserve. We greatly appreciate the additional support Congress has provided for the NHI, and the cooperation we have received from States, resident advocates, and nursing home providers. With continued cooperation and support, we are confident that the NHI will succeed in its goal to improve oversight and the quality of care for nursing home residents.

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